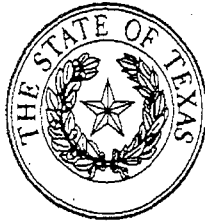


TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER

Concerning the Petition of Waste Control Specialists LLC to the Commission to Request the Attorney General to Institute Condemnation Proceedings; TCEQ Docket No. 2005-1994-RAW.

On November 19, 2008, the Texas Commission on Environmental Quality (Commission) considered during its open meeting the petition filed by Waste Control Specialists LLC to the Commission to request that the Attorney General institute condemnation proceedings. The Commission also considered supplements to the petition; the responses to the petition filed by the Executive Director and mineral interest owners; and the reply filed by Waste Control Specialists LLC.

After oral argument and evaluation of all relevant filings, the Commission found that in order to promote protection of health, safety, and the environment and to provide for the safe management and disposal of low-level radioactive waste, the construction, operation, and proper closure of a low-level radioactive waste disposal facility site is a necessary public use. The proposed location of the low-level radioactive waste disposal facility site is on property identified as Section 25, Block A-29, Public School Land Surveys, Andrews County, Texas (Section 25).

The Commission also found that condemnation of mineral interests underlying Section 25 is necessary to acquire fee simple title to the entire surface and mineral estate, as provided by Texas Health & Safety Code §§ 401.204, 401.205, and 401.209. The following mineral interests underlie Section 25 and should be condemned because they are needed to accomplish the necessary public use:

- (A) Bank of America, Trustee for V.P. Baker Trust (1/96 interest in the Northeast Quarter and the South Half);
- (B) Linda Rae Caperton (1/576 interest in all of Section 25);
- (C) Ashley Crawford Strouth (1/36 interest in the Northwest Quarter);
- (D) Gerald R. Geisler (1/128 interest in the Northeast Quarter and the South Half);
- (E) John Geisler (1/384 interest in the Northeast Quarter and the South Half);
- (F) Lana Kay Martinez (1/576 interest in all of Section 25);
- (G) Daniel Joe Pike (1/576 interest in all of Section 25); and
- (H) Alfred Cooper, Trustee (2/151 interest in the Northwest Quarter).

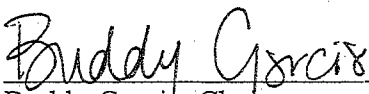
Finally, the Commission found that Waste Control Specialists LLC had attempted to purchase and/or exchange the mineral interests underlying Section 25 to acquire fee simple title to said mineral interests. In addition, Waste Control Specialists had offered each of the above mineral interest owners the ability to enter into a surface use agreement, pursuant to Texas Health & Safety Code § 401.204(b). Waste Control Specialists and the individuals/entities listed above were unable to agree on the damages to be paid for those interests or on an acceptable surface use agreement.

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY that:

1. The Commission orders the Executive Director of the Commission to transmit a request on behalf of the Commission to the Attorney General of the State of Texas to file against any and all owners or lienholders of any interests in the mineral rights underlying Section 25 on which the low-level radioactive waste disposal facility site is proposed to be located, proceedings in eminent domain on behalf of the Commission to acquire fee simple title to the mineral rights underlying Section 25; and
2. The Executive Director is authorized to consult with the Attorney General on the condemnation proceeding and to undertake actions necessary to satisfy the requirements of Texas Property Code Chapter 21.

Issue date: **NOV 21 2008**

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY


Buddy Garcia, Chairman

